

STATE OF SOUTH CAROLINA

(Caption of Case)

In re:

Sally Simmons, Complainant/Petitioner

v.

Duke Energy Carolinas, LLC, Respondent

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2009 - 148 - E

(Please type or print)

Submitted by: Catherine E. Heigel

SC Bar Number: 9268

Address: Duke Energy Corporation

Telephone: 704.382-8123

P.O. Box 1006, EC03T

Fax:

Charlotte, NC 28201-1006

Other:

Email: catherine.heigel@duke-energy.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: Confidential version of Exhibit No. 1 to be filed under seal with the Commission in hard copy

INDUSTRY (Check one)

- ☒ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input checked="" type="checkbox"/> Answer | <input checked="" type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-148-E

In re:)	
)	
Sally Simmons,	)	DUKE ENERGY CAROLINAS'
	)	MOTION FOR CONFIDENTIAL
Complainant/Petitioner	)	TREATMENT OF THE EXHIBIT
v.	)	TO DUKE ENERGY CAROLINAS'
	)	ANSWER AND MOTION TO
Duke Energy Carolinas, LLC,	)	DISMISS
)	
Respondent.)	
)	
)	

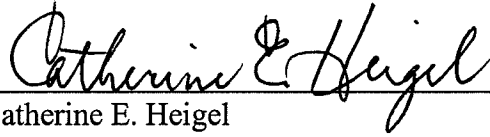
NOW COMES Duke Energy Carolinas, LLC (hereinafter "Duke Energy Carolinas" or the "Company"), pursuant to 26 S.C. Code Ann. Regs. 103-804(Y)(2)(Cum. Supp. 2007) and Commission Order No. 2005-226, "ORDER REQUIRING DESIGNATION OF CONFIDENTIAL MATERIALS," with its motion that the information contained in the Exhibit No. 1 to the Company's Answer and Motion to Dismiss the Complaint of Sally Simmons in Docket No. 2009-148-E be treated and maintained as confidential.

The exhibit identified as "Confidential" contains customer information that is personal and sensitive to Ms. Simmons, and if disclosed, could adversely affect the Complainant. The Company requests, therefore, that the Commission grant the Company's request for confidential treatment pursuant to 26 S.C. Code Ann. Regs. 103-804(Y)(2)(Cum. Supp. 2007).

WHEREFORE, the Company requests that the Commission afford confidential treatment of Exhibit No. 1 of Duke Energy Carolinas' Answer and Motion to Dismiss as

so designated by the Company and grant such other relief as the Commission deems just and proper.

This, the 8th day of May 2009.

A handwritten signature in cursive script, reading "Catherine E. Heigel", written over a horizontal line.

Catherine E. Heigel
Associate General Counsel
Duke Energy Carolinas, LLC
526 S. Church Street, EC03T
Charlotte, North Carolina 28202
Tel: 704-382-8123
Email: catherine.heigel@duke-energy.com

ATTORNEY FOR RESPONDENT,
DUKE ENERGY CAROLINAS, LLC

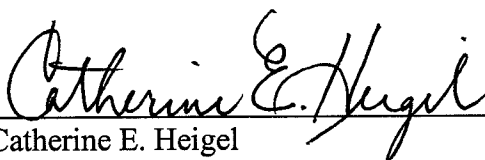
CERTIFICATE OF SERVICE

I, Catherine E. Heigel, hereby certify that a copy of Duke Energy Carolinas, LLC's Motion for Confidential Treatment has been served by hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to:

Sally Simmons
115 McClure Street
Chester, SC 29706

Jeffrey M. Nelson
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

This, the 8th day of May, 2009.



Catherine E. Heigel
Associate General Counsel
Duke Energy Corporation
526 S. Church Street, EC03T
Charlotte, North Carolina 28202
Tel: 704-382-8123
Email: Catherine.Heigel@duke-energy.com

ATTORNEY FOR RESPONDENT,
DUKE ENERGY CAROLINAS, LLC

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2009-148-E

In re:)	
)	
Sally Simmons,)	
)	
Complainant/Petitioner	)	DUKE ENERGY
v.	)	CAROLINAS' VERIFIED
	)	ANSWER AND MOTION TO
Duke Energy Carolinas, LLC,	)	DISMISS THE COMPLAINT
	)	OF SALLY SIMMONS
Respondent.)	
)	
)	

Pursuant to 26 S.C. Regs. 103-826 and 103-829; Rule 12(b)(6) SCRCPP; and other applicable South Carolina law, Duke Energy Carolinas, LLC (hereinafter "Duke Energy Carolinas" or the "Company") answers and moves the Public Service Commission of South Carolina (the "Commission") to dismiss the Complaint of Sally Simmons ("Complainant" or "Ms. Simmons").

ANSWER

For a First Defense

1. All allegations of the Complaint are denied unless specifically admitted in this Answer.

For a Second Defense

2. Ms. Simmons alleges in the first paragraph of her Complaint that Duke Energy Carolinas has billed her for three years of electric service after apparently under-billing her because of an error by the Company. Duke Energy Carolinas admits that it inadvertently stopped billing for electric service to Ms. Simmons' address and that Ms.

Simmons used electricity for approximately thirty-seven (37) months, which was not billed and for which she has not paid.

For a Third Defense

3. Duke Energy Carolinas would show that on March 16, 2004, the account at 115 McClure Street, Chester, South Carolina was established in Ms. Simmons' name. However, based on information, belief, and Duke Energy Carolinas' account records, the Company affirmatively alleges that Ms. Simmons has lived at 115 McClure Street, Chester, South Carolina for more than thirty (30) years, and that the account was transferred to Ms. Simmons' name approximately one year after her husband died.

4. From March 2004 until October 2005, the Company issued Ms. Simmons monthly bills that had three line items, residential service and two outside lights, with the current charges on the bills typically ranging from \$60 to \$80 per month. As a result of past due balances, the monthly total amounts sometimes exceeded \$125.00.

5. Company records indicate that on October 27, 2005, Duke Energy Carolinas issued an order to remove the service to a location where a vehicle accident had destroyed a meter, but the order to stop the billing was applied inadvertently to Ms. Simmons' account instead of the account where the work actually was performed. Ms. Simmons continued to have service and the meter continued to register her usage.

6. Because the orders and the account record indicated the service had been removed, there was no way for Duke Energy Carolinas to recognize that Ms. Simmons still had service to the residence without her reporting it. If the account simply had appeared as inactive, the meter would have remained in the system and in the meter reading route, meaning it may have been discovered sooner. Further, Duke Energy

Carolinas has no record of any calls from the customer during this three-year period. The Company discovered that Ms. Simmons still had service to the residence in November 2008 when responding to an outage in the area.

7. When the meter was set back up on the system, it showed that Ms. Simmons had used 26,747 kWh from the time the Company stopped billing in October 2005 until the meter was set back up on November 17, 2008, a period of approximately 37 months.

8. The Commission's Rule 103-340, section 4, provides that if it is evident that a customer has knowledge of being undercharged without notifying the utility, the utility shall recover the deficient amount for the entire period, not to exceed the applicable statute of limitations. Duke Energy Carolinas believes that the substantial reduction in monthly billing amounts and removal of the residential service line item on the bill statement are *prima facie* evidence that the customer had or should have had knowledge of the billing error. In short, Ms. Simmons had inquiry notice of the billing error (*i.e.*, she had actual notice of circumstances sufficient to cause a prudent person to inquire further). Attached as Confidential Exhibit No. 1 are copies of the bills sent to Ms. Simmons just before the residential account was removed and after it was removed. From these bills, it is apparent that the entire residential service line disappeared, including the meter number, readings, description, and amount. The bill amounts dropped from \$60-\$80 per month to approximately \$13.00 and did not vary from month to month as they had previously with seasonal usage. Clearly a reduction in monthly bills of more than 75% should be obvious to any customer who has been receiving bills for electric service for any length of time.

9. In fairness to those customers who do bring under-billings to the Company's attention and because the Company knows exactly how much energy was used, a 36-month adjustment complies with the Commission's rule and is appropriate. The adjusted amount of \$2,387.54 appeared on the bill dated December 5, 2008. Since this initial billing, the Company has recalculated the under-billed amounts, resulting in a revised charge of \$1,849.38 for the 36-month period. The revised calculation corrects a mathematical error and reduces the original requested amount from the full period to 36 months.

10. Based on information and belief, there are other friends or family members who either live with Ms. Simmons or are actively involved in her business affairs, who also could and should have recognized that Ms. Simmons was being under-billed. As a result, they could have raised the matter more timely with Duke Energy Carolinas.

11. Although section 4 of Rule 103-340 does not require the utility to make payment arrangements on adjustments made under this section of the rule, the Company has offered Ms. Simmons a payment arrangement. Duke Energy Carolinas initially offered to spread the amount due over 12 months after talking with Bessie Simmons, Ms. Simmons' daughter, and Frank McClurkin, Ms. Simmons' grandson. However, no agreement was reached.

12. On December 11, 2008, Mr. William King contacted the Office of Regulatory Staff ("ORS") on the Customer's behalf. When this contact was relayed to Duke Energy Carolinas, the Company offered a 36-month agreement, but this offer was not accepted. The Company closed its file with ORS in December 2008. Because no

agreement or further contact was made, a disconnect notice was issued on March 7, 2009. A final notice was issued on March 30, 2009, which indicated a scheduled disconnect date of April 3, 2009.

13. When Duke Energy Carolinas was contacted again by ORS on April 1, 2009, after the ORS was contacted by William King on Ms. Simmons behalf, the Company renewed its offer of a 36-month payment arrangement, which Mr. King rejected. On April 3, 2009, Ms. Simmons filed this Complaint with the Commission. Duke Energy Carolinas subsequently notified ORS that the recalculation would reduce the billing adjustment. ORS informed Duke Energy Carolinas that John King, a relative of the aforementioned Williams King, again rejected on the Customer's behalf the Company's offer of a 36- month agreement on the reduced amount.

MOTION TO DISMISS

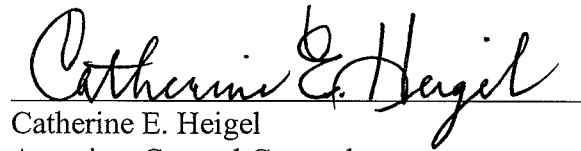
14. Duke Energy Carolina moves that the Commission dismiss the Complaint on the grounds that the Complaint fails to allege any violation of an applicable statute or regulation with respect to Duke Energy Carolinas' handling of the electric service account of Ms. Simmons and therefore fails to state facts sufficient to constitute a claim for which relief can be granted pursuant to Rule 12(b)(6), SCRCP.

15. Duke Energy Carolinas has complied with all applicable laws and regulations regarding Complainant's billing and has attempted to work with Ms. Simmons to arrange a deferred payment plan in order to help Ms. Simmons pay her bills. Ms. Simmons has failed to make payment as required by 26 S.C. Regs. 103-352 and currently owes the Company more than \$1,800.00.

16. Duke Energy Carolinas has complied with the termination procedures outlined in 26 S.C. Regs. 103-352. Therefore, Duke Energy Carolinas requests that Complainant's Complaint be dismissed with prejudice.

WHEREFORE, Duke Energy Carolinas, having fully set forth its Answer, moves the Commission to dismiss the Complaint with prejudice, and requests such other relief as the Commission deems just and proper.

This, the 8th day of May 2009.



Catherine E. Heigel
Associate General Counsel
Duke Energy Carolinas, LLC
526 S. Church Street, EC03T
Charlotte, NC 28202
(704) 382-8123
Email: catherine.heigel@duke-energy.com

ATTORNEY FOR RESPONDENT,
DUKE ENERGY CAROLINAS, LLC

Confidential Exhibit No. 1

REDACTED

[illegible]

Barbara G. Yarbrough, being first duly sworn, deposes and says:

1. My name is Barbara G. Yarbrough and I am employed by Duke Energy Carolinas, LLC (“Duke Energy Carolinas”) as Rates Director. I am responsible for directing the proper administration of Duke Energy Carolinas’ rate schedules and service regulations and the Public Service Commission of South Carolina’s (the “Commission”) rules and regulations. I also am responsible for the investigation of customer Complaints received through the Commission and the Office of Regulatory Staff (“ORS”).

2. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by Duke Energy Carolinas. I am familiar with the records of Duke Energy Carolinas that pertain to Complainant, Ms. Sally Simmons. I personally have worked on said documents and records, and as to the foregoing facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Duke Energy Carolinas, which were made at or about the time of the events, recorded, and which are maintained in the ordinary course of business by Duke Energy Carolinas.

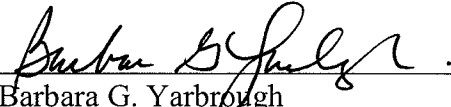
3. I assisted our attorney in preparing the foregoing Answer and Motion to Dismiss the Complaint of Sally Simmons (the “Answer”). I have read the Answer and verify that the information contained within the Answer is accurate and true to the best of my knowledge, information, and belief.

4. I provided the billing payment histories for Ms. Simmons that are attached to the Answer as **Confidential Exhibit No. 1. Confidential Exhibit No. 1** of the Answer is a true and accurate copy of records maintained by Duke Energy Carolinas in the ordinary course of business.

FURTHER AFFIANT SAYETH NOT.

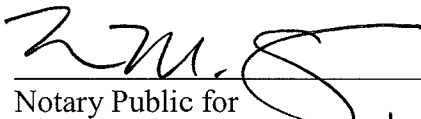
Dated this, the 7th day of May 2009.

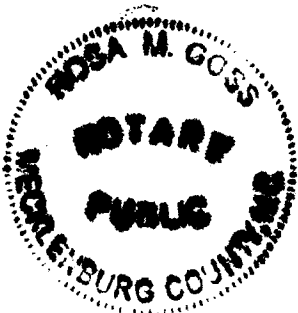
DUKE ENERGY CAROLINAS, LLC


Barbara G. Yarbrough
Rates Director

SWORN TO BEFORE ME

This, the 7th day of May 2009.


Notary Public for
My Commission Expires: 1/28/2014



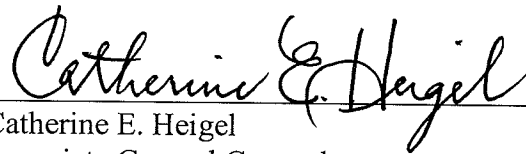
CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas' Verified Answer and Motion to Dismiss to the Complaint of Sally Simmons has been served by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to:

Sally Simmons
115 McClure Street
Chester, SC 29706

Jeffrey Nelson, Esq.
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

This, the 8th day of May 2009.



Catherine E. Heigel
Associate General Counsel
Duke Energy Carolinas, LLC
526 S. Church Street, EC03T
Charlotte, NC 28202
Tel: (704) 382-8123
Email: catherine.heigel@duke-energy.com